THE PROMOTION OF PRIVATE PENSION PLANS IN MANITOBA:

RECOMMENDATIONS OF THE PENSION COMMISSION OF MANITOBA

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TABLE OF CONTENTS

I. Introduction 2

II. Issues of Policy

A. Actuarial Surpluses 3

B. Promotion of Pension Plans 6

1. Increasing Coverage 6

2. Reciprocal Agreement 8

C. Life Income Fund (LIF) 10

D. Multi-Employer Pension Plans (MEPPS) 16

E. Powers of the Superintendent 20

F. Retirement Compensation Arrangements (RCAs) 23

III. Issues of Administration

A. MG-1189s 24

B. Deemed Plan Provisions 28

C. Common-Law Spousal Declarations 29

D. Benefit Entitlement on Change of Provincial Jurisdiction 31

E. Changes Due to Federal Tax Laws 33

F. Credit Splitting 35

G. Annual Information Returns (AIRS) 38

H. Additional Recommendations 40

IV. Appendix

A. Listing of Participants 41

THE PROMOTION OF PRIVATE PENSION PLANS IN MANITOBA
RECOMMENDATIONS OF THE PENSION COMMISSION OF MANITOBA

INTRODUCTION

In February 1991, the Manitoba Pension Commission released a public discussion paper entitled The Promotion of Private Pension Plans in Manitoba. Its purpose was to solicit reaction to a number of proposals designed to reduce the administrative burden on pension plan sponsors and to make pension plans more attractive by introducing flexibility to pension plan vehicles. Two days of public hearings were held in May and over 40 verbal and written submissions were made. A list of those is included in Appendix A.

The Commission was told that the suggestions in the paper were generally moving in the right direction and the Commission was encouraged, for the most part, to recommend many of the ideas contained in the paper to the provincial government for legislative action. Some criticism came from organized labour who told the Commissioners that they generally favored more regulation as a means of boosting private sector coverage; the idea of expanded Canada Pension Plan provisions was put forward by some labour spokespersons. While such a move may very well achieve wider coverage, the Commissioners are of the view that such a recommendation would be outside the mandate it set for itself which restricted its comments to the private system. Nevertheless, failure to achieve gains in coverage based on the revised legislation recommended in this report may mean that a concerted effort may have to be made to examine a more comprehensive public system.

In deciding how to proceed, the Commission feels the most useful approach was to state their recommendations in a subsequent public paper coupled with suggested draft legislative wording. In this way, interested parties could comment on the appropriateness of the technical aspects of the proposal in plenty of time to ensure maximum agreement when a Bill is finally prepared for distribution in the Legislature.

Accordingly, the readers are encouraged to make written submissions to the Pension Commission prior to December 31, 1991 if they see any unintended consequences of the proposals, any undue hardship to members, or any errors or omissions.

The Commission wishes to thank all those who have taken valuable time to comment on the previous discussion paper as a result of their genuine concern for the advancement of retirement income. The Commission considers these people and organizations as partners in the promotion of private pension plans and together we will ensure that many more Manitobans receive adequate income and benefits in their retirement years.

ISSUES OF POLICY

A. Actuarial Surplus

The Commission's Original Proposal

The Commission's proposal contained two policy options. These were:

1. Prohibit surplus refunds with two exceptions:

   a) Upon a plan windup, providing the four criteria established by the Pension Commission (see discussion paper) can be satisfied;

   b) Where there is an amount in excess of Revenue Canada's maximum;

2. Permit surplus refunds only under the following conditions:

   a) There is full disclosure to plan members in advance;

   b) The employer's right to surplus is unequivocal in the plan document or the courts have ruled in the employer's favour; and

   c) There is compliance with Revenue Canada's requirements.

Discussion

The discussion paper addressed the surplus issue and sought the different views regarding entitlement, treatment and allocation. The responses divided along fairly predictable lines. Employees and unions who represent them took a strong position that pensions are in effect deferred wages and any surplus must be used solely for the benefit of plan members. In their opinion, surpluses that are applied to contribution holidays or refunded to a plan sponsor are a confiscation of deferred wages. Furthermore, when an improvement in a pension plan is negotiated or when the plan has an unfunded liability and the employer must contribute more, it is often at the expense of increases in wages or other fringe benefits.

On the other side, employers, consultants, and actuaries generally took the position that the creation of surplus is not accidental, but rather it is the result of planned overcontributions based on conservative assumptions which provide greater benefit security for plan members. They believe that parties responsible for funding should, over time, be permitted to offset surplus arising from favourable experience against future deficits generated by unfavourable experiences.

The Commission had a difficult time reconciling the divergent viewpoints. This difficulty has been experienced in other jurisdictions. Officials in Quebec, for instance, have withdrawn their initial proposal (which allocated surpluses on a 50/50 split basis) due to criticisms from employers, unions, and vendors alike.

Having reviewed the submissions, the Commission finds itself persuaded by two points. Firstly, regardless of industry wishes and legal arguments, the emerging social policy trend is to curtail any group's unfettered access to pension surpluses. Secondly, the Commission is aware that the surplus ownership issue is relatively new and disputes were never envisioned by the plan's original sponsors; some sensitivity to this problem is therefore in order.

Accordingly, the Commission recommends:

That option 1 be adopted:

1. That surplus refunds for registered ongoing pension plans be prohibited by legislation;

2. That, when registering any new pension plan after the date of promulgation, the Superintendent of Pensions must be satisfied that both the plan document and governing trust clearly state ownership of surplus in the event of plan windup;

3. That surplus refunds to employers would be permitted by legislation at termination only provided that:

   a) the plan text clearly permits surplus refunds to the employer or, in case of dispute, the courts have established employer ownership, and

   b) that vested plan members receive increased benefits utilizing, as a minimum, the amount of surplus proportionate to employee contributions.

   c) plan members are provided full disclosure of information on the amount of the surplus including the portion attributable to member contributions.

   d) that at least two-thirds of plan members have provided written consent to the employer's proposal.

4. Contribution holidays for ongoing plans will continue to be permitted. It is noted that contribution holidays would be mandatory when surplus assets exceed Revenue Canada maximums.

Proposed Legislative Wording: Statute Change

Subsection 18(2.1) added

1 The following is added after subsection 18(2):

Registration of new plans

18(2.1) Every pension plan established and registered after the coming into force of this subsection shall, to the satisfaction of the superintendent, specify in the plan document and in the governing trust, the ownership of surplus pension plan assets.

Subsection 26(2) repealed and substituted

2 **Subsection 26(2) is repealed and the following substituted:**

Restriction on surplus refunds

26(2) No funds, including surplus, in a registered pension plan shall be paid out of the plan to an employer unless the commission consents thereto in writing and the commission is satisfied that

(a) the pension plan has been terminated;

(b) the language of the pension plan text clearly permits surplus to be returned to the employer or, in the absence of such clear language, a court of competent jurisdiction has declared that the employer is entitled to surplus funds in the pension plan;

(c) all vested pension plan members have received an increase in benefits utilizing, as a minimum, an amount of surplus proportionate to employee contributions;

(d) pension plan members are provided full disclosure of information on the amount of the surplus including the portion of surplus attributable to member contributions;

(e) at least two-thirds of the pension plan members have consented in writing to the employer proposal; and

(f) any conditions respecting the disposition of surplus as may be prescribed by the regulations have been complied with.

B. PROMOTION OF PENSION PLANS

1. Increasing Coverage

Discussion

Recognizing the wealth of experience and expertise possessed by those individuals and organizations involved in the operation, sponsorship, and administration of pension plans, the Commission called upon the industry to forward suggestions for revitalizing the attractiveness of registered pension plans.

The response to the Commission's approach to the promotion of registered pension plans covered a wide spectrum. Many of the respondents involved directly in the business of selling, promoting, or servicing pension plans identified the attainment of national uniformity as the most direct means of regenerating confidence and participation in registered pension plans. The Commission was informed that only when the variability stemming from the lack of uniform pension legislation is removed will current and potential plan sponsors regain their enthusiasm for registered pension plans.

While the Commission acknowledges the importance of national uniformity, it is of the opinion that achieving this goal is unlikely. Political and technical complexities work against uniformity. Nevertheless, it believes some degree of satisfactory standardization can be achieved through a modernized reciprocal agreement (see discussion on reciprocal agreement) and has asked the Superintendent to actively participate in current multilateral discussions directed at this goal.

The Commission was particularly taken with the analysis provided by two presenters who argued that it was small to medium sized businesses (up to 250 employees) who do not currently have pension plans because of cost and regulations which are geared more to larger employers who tend to have defined benefit plans.

The Commission is convinced that the small to medium sized employer is the ideal Manitoba market for the expansion of pension plan coverage and that some special considerations may have to be made to achieve better market penetration. The Pension Commission is hesitant, at this juncture, to legislate specific amendments to the existing Act. Nonetheless, it is willing to consider adding special rules for plans with less than 250 members. In the meantime, the Commission proposes to establish a working group of interested parties whose task it will be to suggest ways of making the legislation more attractive to small and medium size employers.

It is important to note, however, that the Pension Commission does not want to be part of a movement away from the high standards already legislated in the province. Rather, it is of the view that the solution is to be found in streamlining the administrative side of the regulatory equation.

Accordingly, the Commission recommends:

(1) That a special Task Force be struck from members of the pension community with the aim of drafting regulations promoting the creation of new pension plans among firms with less than 250 members.

Proposed Legislative Wording: Statute Change

Clause 37 (x) added

1 Section 37 is amended by adding the following after clause (w):

(x) respecting the administration and benefit entitlements of defined contribution plans with not more than 250 members.

2. Reciprocal Agreement

Discussion

Considerable effort has been expended over the last four or five years to update the interjurisdictional reciprocal agreement which has been in place since 1968. However, the various provinces have not been able to come up with a framework acceptable to all parties.

Under this multi-lateral agreement, a plan is registered in the province having the plurality of members. That province's rules apply for plan administration but not for benefits.

The lack of a modern reciprocal agreement means that plan sponsors with employees in more than one jurisdiction have to concern themselves with slightly different rules being applied depending on the plan member's benefit entitlements. Not only does this scenario increase cost and complexity but also greater frustration on the part of employers, unions, and plan administrators. In addition, the various regulatory agencies are being asked to enforce the laws of other provinces, laws that are increasingly complex and unique. Each province cannot be 100% assured that their Pension Benefits Act is being fully and completely enforced by the other jurisdictions.

Federal pension legislation applies to all members of federally regulated industries regardless of their province of employment. In many cases this means that one spouse is covered by provincial legislation, the other by federal law. The Pension Commission notes that there has not been significant difficulty with this situation and postulates that this approach may be an appropriate framework for renewed negotiations for a reciprocal agreement. Realizing that complete uniformity in pension law is not likely, the closest provinces may come to uniformity is through a reciprocal agreement which states that the pension laws of the province of registration shall apply to all plan members, regardless of their province of employment. In this way, plan sponsors, administrators, unions and regulators can be assured that all members of a pension plan are being treated in a similar manner and much of the confusion surrounding the communication of benefits would disappear.

As an example, 562 Quebec residents would be governed by Manitoba pension law while 1655 Manitobans would be governed by Quebec legislation. This approach has the possibility of contributing to the promotion and creation of more pension plans, especially for those sponsors who have held back establishing a national plan because of the current interjurisdictional complexities.

Accordingly, the Commission recommends:

> That The Pension Benefits Act be amended to permit the province to enter into multi-lateral or bilateral agreements whereby the pension laws of the province of registration apply to all plan members.

Proposed Legislative Wording: Statute Change

Clause 11(d) added

1 Section 11 is amended by adding the following after clause (c):

(d) enter into agreements with the authorized representatives of the governments of other provinces or territories of Canada and of the Government of Canada, or any of them, to limit, in whole or in part, the application of this Act and the regulations and authorizing all or part of the laws of a designated province to apply to a pension plan which would otherwise be required to be registered in Manitoba.

C. LIFE INCOME FUND

Commission's Original Proposal

In recognition of some of the more serious limitations of the traditional pension annuity the Pension Commission proposed introduction of a new Pension Instrument called the Life Income Fund (LIF). Financial institutions including banks, trust companies, insurance companies and credit unions would be permitted to offer the LIF to retirees of registered pension plans and holders of locked-in RRSPs.

The LIF itself consists of two parts.

Part One

At retirement, or no later than the retiree reaches age 71, the retiree can transfer funds from a registered pension plan or a locked-in RRSP to a LIF.

From the date of transfer until age 80 the LIF holder can determine their annual income subject to a minimum and a maximum. The minimum is equal to the fund balance at the beginning of the year divided by the number of years to age 90. The maximum is that sum which would be paid by a term certain annuity to age 90.

The retiree retains control of the choice of investment within the parameters permitted by Revenue Canada.

Subject to the terms of the investment, the LIF funds may be transferred from the LIF of one financial institution to that of another so long as the LIF contracts are on the Superintendent's approved list.

Should the retiree die while the retirement capital is still in part one of the LIF, the balance of the LIF would go to either the beneficiaries or the estate of the LIF holder. If there is a spouse, the funds will have to be transferred to a spousal LIF.

Part one of the LIF may be continued until the retiree reaches age 80. At that time the retiree must purchase a life annuity (Part Two).

The purchase of an annuity may be made at any time before age 80.

Part Two

Before December 31st of the year of the retiree's 80th birthday, all refunds remaining in the LIF must be used to purchase a life annuity.

Discussion

The Pension Commission's proposal respecting the implementation of the LIF received a great deal of attention during the recent Public Hearings. The notion of increasing the opportunity for pensioners to exercise control of the investment, expenditure, and assignment upon death of their pension funds touched a responsive chord.

On the whole, the Commission witnessed a great deal of support for its proposal. Group after group came out in favor of the LIF. One plan administrator, representing over 20,000 members in Western Canada, stated that without such legislation it would invariably have to convert to a group RRSP to meet the demands of its members.

Although some of the individual presenters argued for even greater discretion over the expenditure and investment of pension funds at retirement, most appeared to be satisfied that the Commission's proposal is a significant move in the right direction.

The Commission was counselled by other participants at the public hearing of the need to promote uniformity and adopt a model as close to that of Quebec's as possible. The Commission acknowledges the value of adopting such an approach to its recommended design.

In terms of significant modifications to its proposal, the Commission was asked to reexamine the participation of members in defined benefit pension plans in the LIF. The difficulty, two presenters pointed out, is that while in the case of defined contribution plans where members' accounts may be ported without any impact to the plan, the financial solvency and actuarial stability of defined benefit plans might be jeopardized by allowing members unrestricted rights to transfer defined benefits to a LIF.

While the Commission notes that other jurisdictions indeed restrict the portability rights of members in defined benefit plans, the experience to date in Manitoba, which permits such portability, would not seem to indicate plan solvency is being undermined. In the interest of maintaining the portability rights of Manitoba plan members, the Commission proposes not to restrict the existing portability rights of members in defined benefit plans. However, the Commission does intend to monitor the solvency of defined benefit plans and will not hesitate to react if problems respecting solvency begin to arise.

Accordingly, the Commission recommends:

That legislation be drafted to permit the introduction of the Life Income Fund utilizing Quebec legislation as a model.

That the solvency of defined benefit plans be monitored.

Proposed Legislative Wording: Statute Change

Subsection 21(13.1) added

1 The following is added after subsection 21(13):

21(13.1) Notwithstanding subsections 21(1), (2), and (6), every member or spouse of a member who, on or after age 55, becomes entitled to a pension benefit, is entitled, to replace that benefit with a life income fund in a manner prescribed by the regulations.

Clause 37(e) repealed and substituted

2 Clause 37 is repealed and the following substituted:

(e) prescribing the conditions under which, upon termination of employment of an employee, upon termination of an employee's membership in a pension plan or upon the termination or winding up of a pension plan, pension benefit credits may be held in trust by the administrator, insurer, or trustee of the pension plan, or transferred to the administrator, insurer or trustee of another pension plan or to a registered retirement savings plan or to a life income fund or other arrangement as prescribed by regulation or to the commission or to the agency designated under section 16;

Regulatory Change

Sections 18.2 to 18.10 added

1 The following is added after section 18.1:

18.2(1) Notwithstanding subsection 18(1), a pension benefit credit arising from a deferred life annuity under section 21 of the Act may be transferred to a life income fund that meets the requirements of sections 18.2 to 18.10.

18.2(2) Where a contract is entered into between a financial institution duly authorized by the superintendent and a purchaser who is a member, former member or the spouse of a member of a pension plan and under the terms of which the institution, in return for the capital that it receives, must pay the purchaser an income of which the amount may vary annually until the balance of the fund is used to purchase an immediate life annuity, the contract shall be in a form approved by the superintendent.

18.2(3) A contract referred to in subsection (2) shall meet the requirements of the Income Tax Act (Canada) for a registered retirement income fund.

18.2(4) A contract establishing a life income fund shall set out,

(a) that the fiscal year of the fund must end on December 31, of each year and may not exceed twelve months;

(b) that the amount of the income paid during a fiscal year must, subject to the requirements of section 18.3, be set by the purchaser at the beginning of each fiscal year or at another agreed to interval of more than one year where the financial institution guarantees the return on the fund during that interval, and that this interval must terminate at the end of a fiscal year of the fund;

(c) that the payment of the income to the purchaser must begin not later than during the second fiscal year of the fund; and

(d) that the total balance of the fund must be used to purchase an immediate life annuity not later than the December 31, of the year in which the purchaser reaches age 80.

18.2(5) Where the purchaser dies before conversion of the total balance of the fund into a life annuity as required by clause 4(d) the agreement must provide,

(a) that the spouse or common-law spouse of the purchaser is entitled to transfer the balance to a spousal life income fund where the spouse has not received, or is entitled to receive, a benefit under subsection 31(2) of the Act; or

(b) that, where there is no surviving spouse or common-law spouse, a named beneficiary or the estate is entitled to a benefit equal to the balance in the fund.

18.2(6)

(a) Subsections 31(2) to (4) of the Act apply to a life income fund with such modifications as the circumstances require.

(b) Where a life income fund is divided between the spouses pursuant to subsection 31(2) of the Act, the benefit received by each spouse may be transferred to a life income fund pursuant to sections 18.2 to 18.10.

18.2(7) Prior to converting the balance of the fund into an immediate life annuity, the purchaser may transfer all or part of the balance to

(a) another life income fund,
(b) an insurer that guarantees payment of a life annuity, or
(c) a registered locked-in savings plan in accordance with section 18.1 before December 31 of the year in which the purchaser reaches age 71.

18.2(8) Where the term agreed to for the life income fund has expired, the date of the transfer may not be more than 30 days after the date of the request for transfer by the purchaser.

18.2(9) A financial institution shall not amend the agreement with the purchaser where the effect would be to reduce benefits of the purchaser under the agreement unless the purchaser

(a) has the right to transfer the balance of the fund under the terms prevailing prior to the date of the amendment; and
(b) receives, not less than 90 days before the date on which he or she is entitled to exercise the right, a notice showing the nature of the amendment and the date from which he or she may exercise that right.

18.2(10) Where a life income fund holds identifiable and transferable securities, the transfer referred to in subsections (6) and (7) may, unless otherwise stipulated, at the option of the financial institution and with consent of the purchaser, be effected by remittance of the investment securities of the fund.

18.2(11) A financial institution may not make any amendment other than the amendment provided for in subsection (9) without giving prior notice to the purchaser.

18.2(12) The financial institution may amend the contract only to the extent that it remains in conformity with the contract approved by the superintendent in accordance with subsection (2).

18.2(13) An agreement establishing the life income fund shall also set out

(a) the name and address of the financial institution;

(b) the powers that, where applicable, are granted to the purchaser with respect to investment of the capital; and

(c) the method and factors used to establish the value of the fund or of the balance of the fund for the purpose of

(i) a transfer of assets,
(ii) a conversion into a pension, or
(iii) a transfer upon the death of the purchaser.

18.3(1) The amount of income paid during a fiscal year of a life income fund may not exceed amount "X" or be less than amount "m" calculated in accordance with the following formulas:

Formula

$$\frac{C}{F} = X$$

$$\frac{C}{H} = m$$

In these formulas:

C is the balance of the fund at the date of the beginning of the fiscal year;

F is the value at the beginning of the fiscal year of a pension of which the annual payment is $1 payable at the beginning of each fiscal year between that date and December 31 of the year during which the purchaser reaches age 90; and

H is the number of years between January 1 of the year in which the calculation is made and December 31 of the year during which the purchaser reaches 90.

(2) For the initial fiscal year of the fund, the limit "m" shall be set at zero and the limit "X" shall be adjusted in proportion to the number of months in that fiscal year divided by 12, with any part of an incomplete month counting as one month. Where a part of the fund purchased at the date of the beginning of the initial fiscal year corresponds to sums transferred directly or indirectly during the same year from another life income fund of the purchaser, the limit "X" shall be set at zero.

(3) The value F in subsection (1) shall be calculated by using an interest rate of,

(a) for the first 15 years, not more than the percentage obtained on long-term bonds issued by the Government of Canada for the month preceding the date of the valuation, as compiled by Statistics Canada and published in the Bank of Canada Review under identification number B-14013 in the CANSIM System; and

(b) not more than 6% thereafter.

18.4 Where, in the application of clause 18.2(4)(b) the amount of income to be paid to the purchaser is fixed at an interval of more than one year, section 18.3 shall apply with such modifications as the circumstances require to determine, at the date of the beginning of the first fiscal year in the interval, the amount of income to be paid for each fiscal year in that interval.

18.5 A contract between a purchaser and a financial institution must provide that the institution undertake to provide the statements required in sections 18.8 to 18.10.

18.6 All or part of the balance of the life income fund may be converted to a life annuity subject to section 18.7.

18.7 Where a surviving purchaser or spouse of a purchaser dies, an insurer shall guarantee to the surviving purchaser or purchaser's spouse who has not waived it, a life annuity equal to at least 66-2/3 of the amount of the life annuity that the purchaser was receiving.

18.8 The financial institution must, at the beginning of each fiscal year of a life income fund provide the purchaser a statement indicating,

(a) the sums deposited, their source, the accumulated earnings and withdrawals made during the fiscal year, the fees debited since the last statement and the balance in the fund,

(b) the maximum amount that must be paid to the purchaser as income for the next fiscal year, and

(c) the minimum amount that must be paid to the purchaser as income for the next fiscal year.

18.9 Where the purchaser who is a member or a former member dies before the total balance of the life income fund has been converted into an immediate life annuity, the financial institution that manages that fund must provide to the purchaser's spouse or, failing that, to the spouse's assigns a statement and containing the information prescribed in clause 18.8(a) effective as of the date of death.

18.10 Where the total balance of the life income fund is transferred to another institution or converted into a life annuity with an insurer, the institution that manages the fund must provide to the purchaser a statement containing the information prescribed in clause 18.8(a) established at the date of the transfer or of the conversion to a life annuity.

D. MULTI UNIT PENSION PLANS

Commission's Original Proposal

The Pension Commission of Manitoba has long recognized the need to introduce legislative changes which would facilitate the creation and efficient administration of Multi-Unit Pension Plans. Multi-Unit legislation is intended to encompass both the more traditional multi-employer scenarios as well as instances in which several unions or employee organizations seek to establish a plan with a single employer. In view of the widespread support implementation of multi-employer/multi-unit legislation enjoys amongst the Pension industry, the Commission included draft legislative wording for assessment and comment in the Public Discussion Paper.

Discussion

Of the parties which chose to respond there seemed to be considerable agreement as to the Commission's stated aims. Many of the respondents took the time to request that the Commission clarify certain issues and/or offered suggestions for improving the draft legislative wording.

The question of employer liability was identified as one of the provisions requiring clarification. This question is acknowledged to be of extreme importance to those employers contemplating the establishment of a Multi-Unit Pension Plan. While the Commission feels the legislation is quite explicit in limiting liability to the level of contributions established in the collective agreement, the Commission agreed to undertake steps to more fully clarify employer liability.

A second issue seen as requiring clarification is whether the application of the MUPP provisions is meant to be mandatory. Several respondents argued that mandatory application of the MUPP legislation would be counterproductive. In cases where both the employer and employees wish to continue to be governed under the plan legislation mandatory classification as a MUPP and the mandatory application of the new provisions would be undesirable. Recognizing that not all plans which might fall under the MUPP definition may want to be governed accordingly, the Commission intends to provide for plans to be able to declare their desire to be regulated as a MUPP.

One consultant, specializing in plans involving multiple employers, made several specific suggestions for improving the draft legislative wording. Among these is the need to permit forfeiture of small benefits where the whereabouts of a terminated plan member are unknown. A second suggestion is to require that a former member seeking a refund of non-vested or non locked-in funds should submit a formal written request.

Accordingly, the Commission recommends:

> That the draft legislative wording be revised to incorporate the suggestions noted above.

Proposed Legislative Wording

Section 26.1 added

1 The following section is added after section 26:

Definitions

"employment" means an employee's employment with a participating employer;

"member" means a person entitled to a pension benefit credit;

"multi-unit pension plan" means a pension plan administered for employees of

(a) two or more participating employers, or
(b) one employer, where employer and employee contribution rates are governed by the terms of two or more collective agreements, participation agreements or other contractual obligation satisfactory to the superintendent;

"participating employer" means an employer who is contractually required to make contributions to a multi-unit pension plan on behalf of employees;

"termination of membership" means

(a) termination of membership in the local union, association or organization; or
(b) a continuous period of not less than 24 months during which contributions are not remitted to a multi-unit pension plan by or on behalf of a member.

Compliance required

26.1(2) Except as provided by this section, a multi-unit pension plan shall comply with all requirements of the Act.

Designation of multi-unit pension plan

26.1(3) This section applies only to a pension plan that has been designated by the superintendent as a multi-unit pension plan and no plan shall be so designated unless

(a) it is demonstrated to the satisfaction of the superintendent that all conditions set out in this section have been complied with; and
(b) the trustees of the multi-unit pension plan have declared in writing their intent to be regulated as a multi-unit pension plan.

Board of trustees

26.1(4) A multi-unit pension plan shall have a board of trustees to administer the plan and the board shall be constituted so that the number of trustees representing members of the plan is not less than the number of trustees representing employers.

Transfer to another plan

26.1(5) Where an employee who is a member of a multi-unit pension plan is transferred to another pension plan of a participating employer, the employee may forthwith join the other pension plan.

Service credits

26.1(6) All of an employee's service with a participating employer shall be taken into account for purposes of determining eligibility for benefits in a multi-unit pension plan.

Contributions on behalf of member

26.1(7) Contributions made to a multi-unit pension plan by, or on behalf of, a member of a multi-unit pension plan are vested and locked-in after the completion of 350 hours of employment in each of two consecutive calendar years.

Contributions made by member

26.1(8) Contributions made to a multi-unit pension plan by a member that are not vested or locked-in pursuant to subsection (7), shall be refunded to the member with interest within 60 days after the participating employer receives written notification from the member of the member's termination of membership in the pension plan.

Forfeiture of account

26.1(9) Notwithstanding subsection (8), if the account balance is less than 2% of the yearly maximum pensionable earnings and the whereabouts of the member are not known following two years of inactivity, the account may be forfeited.

Liability of employer limited

26.1(10) A participating employer's liability in respect of funding the benefits of a multi-unit pension plan is limited to the amount the participating employer is contractually required to contribute to the plan.

Requirements for multi-unit plans

26.1(11) A multi-unit pension plan shall contain provisions, consented to in writing by the superintendent, that

(a) specify the methods of allocation and distribution of the assets of the plan, and the priorities for determining the benefits of members entitled to them where the assets of the plan are not sufficient to pay all benefits in the winding-up of the plan;
(b) provide for the allocation of surplus assets in the winding-up of the plan;
(c) outline the consequences of a participating employer's withdrawal from the plan in respect of the funding and vesting of benefits for members affected by the withdrawal;
(d) specify the circumstances when termination of membership in the plan occurs; and
(e) specify how full funding of benefits will be achieved where the plan is not fully funded.

E. POWERS OF THE SUPERINTENDENT

Commission's Original Proposal

The Pension Commissioners proposed to amend The Pension Benefits Act to provide the Superintendent with additional regulatory powers necessary to

1. Appoint a plan administrator where a plan administrator is not found or fails to act in a plan windup or,

2. Place a plan under trusteeship and designate an individual(s) to act as a trustee in cases where in the opinion of the Superintendent a plan is not being administered in accordance with the Act, or where the members' interests are in jeopardy or,

3. Appoint a plan administrator and place the plan under trusteeship and appoint individual(s) to serve as trustees.

Discussion

The Commissioners' proposal is intended to ensure that the Superintendent is properly empowered to intervene, and if necessary issue an order to replace administrators and/or trustees, where the interests of plan members are being threatened. Superintendents in a number of other jurisdictions have similar legislative authority. Regulators report that these powers have been of particular assistance in resolving matters emanating from the windup of a plan in cases of receiverships and bankruptcies.

The Commission further notes that all the participants who commented on this proposal agreed that it was important for the Superintendent to be given the necessary regulatory powers to ensure the adequate administration of plans. Several participants did believe, however, that the proposal should be modified to allow the party(s), subject to an order of the superintendent, the right to appeal to the Commission as is the case in other jurisdictions. The Commission is fully supportive of this suggestion.

Accordingly, the Commission recommends:

That The Pension Benefits Act be amended to allow the Superintendent to replace an administrator and/or trustees where the interests of plan members are being threatened.

That The Pension Benefits Act be amended to allow the affected party(s) the right to appeal to the Commission.

Proposed Legislative Wording: Statute Change

Section 8 repealed and substituted

1 Section 8 is repealed and the following is substituted:

Powers of Superintendent

8(1) The superintendent or his duly authorized representative may, at any reasonable time

(a) inspect the books, files, documents and other records respecting a pension plan kept by an employer, an insurer, a trustee of the pension plan or any other person; and
(b) require any employer, insurer, trustee of a pension plan or other person to furnish, in a form acceptable to the commission, such information as the commission considers necessary for the purpose of ascertaining whether this Act and the regulations have been or are being complied with.

8(2) Where

(a) an employer, insurer, administrator or trustee of a pension plan or other person fails to respond to a request for information pursuant to subsection (1);
(b) in the opinion of the superintendent, a plan or the administration of a plan is not in conformity with this Act;
(c) the person administering a plan cannot be located or is insolvent or there is no person or persons to undertake the winding-up of a plan; or
(d) in the opinion of the superintendent, the employer, insurer, administrator, or trustee of a pension plan or other person has committed a breach of trust or other form of misconduct;

the superintendent may make an order pursuant to subsection (3).

8(3) The superintendent, by written order, may

(a) require any person to take or to refrain from taking any action in respect of a pension plan; or
(b) act as trustee or administrator, or appoint a person or persons to act as trustee or administrator of a pension plan.

8(4) Where the superintendent or other person has been appointed trustee or administrator of a pension plan, the reasonable administration costs and fees of the superintendent or other person may be paid out of the pension fund.

8(5) Where the superintendent makes an order under subsection (3), the person whose administration or conduct gave rise to the order shall be notified by certified mail of the order.

8(6) Where the administrator, trustee, employer or other person who is the subject of an order objects to the order, that person may, within 30 days of the mailing of the order, serve on the commission a notice of objection requesting a hearing and setting out the reasons for the request and all relevant facts.

8(7) Where the person requests a hearing by the commission in accordance with subsection (5), the commission shall fix a time for and hold a hearing.

8(8) At or after the hearing, the commission, by order may direct the superintendent to carry out or refrain from carrying out the order and to take such action as the commission considers the superintendent ought to take.

8(9) An appeal of the commission's order lies to the Court of Appeal and section 36 applies, with such modifications as the circumstances require, to any appeal taken.

F. RETIREMENT COMPENSATION ARRANGEMENTS

Commission's Original Proposal

The Pension Commission proposed to make the necessary legislative amendments to exclude RCAs from the jurisdiction of The Pension Benefits Act.

Discussion

The Commission's proposal is intended to clarify legislatively that Retirement Compensation Arrangements are not Registered Pension Plans and are therefore not subject to the terms and conditions of The Pension Benefits Act. The Commission noted that respondents to this proposal were almost uniformly supportive.

Accordingly, the Commission recommends:

That a legislative amendment be prepared to exclude Retirement Compensation Arrangements from the jurisdiction of The Pension Benefits Act.

Proposed Legislative Wording (other Acts)

Clause 1(1)(e) added

1 The definition of "pension plan" in subsection 1(1) is amended by adding the following after clause (d):

(e) but does not include a retirement compensation arrangement as defined from time to time in the Income Tax Act (Canada);

III. ADMINISTRATIVE ISSUES

A. MG-1189 TRANSFER FORM

The Pension Commission proposed the establishment of a pre-approved list of standard locked-in RRSP contracts and the institutions authorized to sell them. Once approved it will be the responsibility of the particular institution to retain a copy for periodic reference.

The objective is to eliminate an administrative burden while maintaining an opportunity for effective regulation. The overwhelming majority of parties responding to this proposal indicated their support.

Accordingly, the Commission recommends:

Proposed Legislative Wording: Regulation Change

Subsection 18(3) repealed and substituted

1 Subsection 18(3) is repealed and the following substituted:

Definitions

18.1(1) In this section,

"approved" means approved in writing by the superintendent;

"contract" means a contract or policy registered as a registered retirement savings plan under the Income Tax Act (Canada) or a life annuity contract issued through an insurance company to hold moneys that are the subject of a transfer;

"life annuity contract" means arrangements made through an insurance company to purchase a pension that

(a) is not commutable; and
(b) will commence before the person who is to receive the pension attains the age of 71 years;

"transfer" means a transfer of locked-in moneys to a registered retirement savings plan as referred to in subsection (2); and

"underwriter" means the underwriter, depository or issuer of a contract.

Conditions for transfer

18.1(2) No transfer of locked-in moneys to a registered retirement savings plan under subsection 21(13) of the Act shall be made unless the conditions and requirements of this section are complied with.

Approval of contract

18.1(3) Where a contract is entered into, the underwriter shall file, for the approval of the superintendent, a specimen certified copy of the contract, including any amendments made thereto.

List of underwriters

18.1(4) The superintendent shall establish and maintain an approved list of underwriters.

Approved list

18.1(5) **An underwriter shall not accept a transfer unless**

(a) the transfer is in a form that complies with the approved specimen certified copy of the contract, as amended where applicable;

(b) the underwriter has been notified in writing by the superintendent that his or her name is on the approved list of underwriters; and

(c) the underwriter has not been notified that his or her name has been removed from the approved list of underwriters.

Removal from list

18.1(6) The superintendent may, without affecting the liability of an underwriter in relation to any transfer or contract, remove the name of an underwriter from the approved list of underwriters where

(a) a specimen certified copy of a contract or amendment being used has not been filed as required under subsection (3); or

(b) the underwriter has acted in breach of any obligation imposed on an underwriter under this section.

18.1(7) A contract shall contractually incorporate the appropriate definitions in subsection (1) and subsection 1(1) of the Act and shall contractually provide

(a) subject to clause (b), that all moneys, including investment earnings, subject to a transfer shall be used to provide or secure a pension that would, but for the transfer or any previous transfer, be required by the Act and the regulations;

(b) that no transfer shall be permitted except to

(i) transfer the moneys to another underwriter's approved contract,
(ii) purchase a life annuity contract,
(iii) another pension plan, if and to the extent that pension plan permits the transfer, on the condition that the eventual payment from the other pension plan be made only in the form of a pension that would otherwise be required by the Act or a benefit referred to in subsection 21(6) of the Act,

(iv) comply with section 31 of the Act, or
(v) transfer the moneys to a life income fund in accordance with subsection 21(13.1) of the Act and the regulations;

(c) subject to subsection (8), that no withdrawal, commutation or surrender of moneys shall be permitted;

(d) subject to section 31 of the Act, that the moneys shall not be assigned, charged, alienated or anticipated and are exempt from execution, seizure or attachment and that any transaction purporting to assign, charge, alienate or anticipate the moneys is void;

(e) in the case of a registered retirement savings plan, that the moneys shall be invested in a manner that complies with the rules for the investment of registered retirement savings plan moneys as provided for in the Income Tax Act (Canada) and the regulations thereunder, and shall not be invested, directly or indirectly, in any mortgage in respect of which the mortgagor

(i) is the owner of the registered retirement saving plan, or

(ii) the spouse, parent, brother, sister or child of the owner of the registered retirement savings plan;

(f) that where moneys are paid out contrary to the Act or this section, the underwriter shall provide or ensure the provision of a pension equal in value to the pension that would have been provided had the moneys not been paid out;

(g) that the underwriter making a transfer shall ensure that the name of any transferee underwriter is on the superintendent's approved list of underwriters;

(h) that the underwriter making a transfer shall, prior to transferring the moneys to another underwriter,

(i) advise the transferee underwriter in writing of the locked-in status of the moneys, and
(ii) make his or her acceptance of the transfer subject to the conditions provided for in this subsection;

(i) that if the underwriter making the transfer does not comply with clause (g) or (h) and the transferee underwriter fails to pay the transferred moneys in the form of a pension or in a manner prescribed by this section, the underwriter making the transfer shall provide or ensure the provision of the pension referred to in clause (f);

(j) that the pension to be provided to a member with a spouse shall, at the time the pension payments begin, be such a joint life pension as would be in compliance with section 23 of the Act, unless the member and the spouse of the member jointly agree to waive the requirement in accordance with subsection 23(3) of the Act and the regulations;

(k) that on the death of a member with a spouse or former member with a spouse, the moneys shall be used to provide a pension for the surviving spouse and shall be transferred

(i) to a registered retirement savings plan in accordance with the relevant provisions of this section, or
(ii) to purchase a life annuity contract;

(l) that moneys not locked-in shall not be transferred to or held under a contract, other than a life annuity contract, under which locked-in moneys are to be held unless the locked-in moneys are held in a separate account which contains only locked-in moneys.

18.1(8) Notwithstanding subsection (7), where a physician certifies that due to mental or physical disability, the life expectancy of a member is likely to be shortened considerably, a contract may provide for the withdrawal of moneys as a lump sum or series of payments for purposes of subsection 21(6) of the Act.

18.1(9) An administrator shall not effect a transfer to an underwriter unless the administrator

(a) ascertains that the underwriter is on the list of approved underwriters referred to in subsection (5) or makes the transfer to a life annuity contract; and
(b) advises the underwriter in writing of the requirement to lock-in the moneys.

18.1(10) Where an administrator does not comply with subsection (9) and the transferee underwriter fails to pay the moneys transferred in the form of a pension or in the manner provided for under subsection (7), the administrator of the pension plan continues to be liable to ensure that the prospective recipient of the pension benefits receives a pension equal in value to the pension that would have been provided had the transfer not been made.

18.1(11) Where a prospective recipient receives any moneys from a transferee underwriter in respect of which the pension plan meets its continuing liability under subsection (10), the pension plan has a right of action against the recipient for those moneys.

18.1(12) Subsections (9), (10) and (11) apply to an underwriter making a transfer and to a transferee underwriter referred to in clause (7) (g) as if the underwriter making the transfer was the administrator of the plan and as if the transferee underwriter referred to in that clause was accepting the transfer from the administrator.

18.1(13) An underwriter who is a party to a contract shall comply with the contractual requirements provided for in subsection (7) or shall ensure that those requirements are complied with.

B. DEEMED PLAN PROVISIONS

Commission's Original Proposal

The Commission, in an effort to reduce the administrative workload of administrators, had proposed the concept of "deemed plan provisions." Under this concept all plans would be "deemed" to incorporate required legislative language, regardless of whether or not the language was specifically approved by plan trustees. It was suggested that this would reduce the "red tape" necessary to register new amendments which a plan would have to comply with in any event.

Discussion

While there was some support for the Commission's suggestion, Commissioners were persuaded to drop the proposal based on several of the arguments presented. These include:

(1) concern that plan texts would not be kept current thereby risking confusing or misinforming plan members;

(2) concern that sponsors and administrators may not take the time to properly understand and interpret legislative changes;

(3) the risk that more than one source of plan text information would exist thereby actually increasing administrative costs.

Accordingly, the Commission recommends:

That the proposal to introduce deemed plan provisions to The Pension Benefits Act be withdrawn.

C. COMMON-LAW SPOUSE DECLARATION

Commission's Original Proposals

The Commission proposed to end the requirement that plan members with a common-law spouse file a declaration form with the plan administrator for the purposes of credit splitting. In its place the Commission proposed to allow a duly authorized affidavit, on behalf of the plan member, attesting to the existence and length of a common-law marriage, to be submitted to the plan administrator at any time prior to benefit payout.

Discussion

The Commission's proposal to replace the current common-law declaration form with an improved form aims to eliminate an administrative irritant. The Commission is well aware that few plan members were bothering to enlist their common-law spouses and that plan administrators find themselves having to rely on incomplete and inaccurate information in attempting to execute a division on marriage break-up. The proposal to utilize a declaration form signed by both parties after the relationship has ended is seen as introducing a measure of administrative flexibility. The flexibility arises because administrators can ask both parties to either submit satisfactory evidence or refer to the courts for a determination of entitlement (e.g. for consistent dates).

Accordingly, the Commission recommends:

> That the Act be amended to provide for common-law spousal entitlements upon submission to the plan administrator of a mutually agreed-upon declaration form or upon certification of the courts.

Proposed Legislative Wording: Statute Change

Subsection 1(2) repealed and substituted

1 Subsection 1(2) is repealed and the following is substituted:

1(2) For the purposes of applying this Act and the regulations to a pension plan or a member of a pension plan, the period during which a member of a pension plan shall be considered a party to a common-law relationship shall be determined in accordance with the regulations.

Regulation Change

Clause 24(1)(b) repealed and substituted

1 Clause 24(1)(b) is repealed and the following is substituted:

(b) as of the date that the common-law relationship terminated as specified in the form in section 28 or as determined by a court of competent jurisdiction.

Section 28 repealed and substituted

2 Section 28 is repealed and the following substituted:

28 For the purposes of subsection 1(2) of the Act, where a member of a pension plan wishes to make a declaration that the member was a party to a common-law relationship such a declaration shall be made in the following form:

I, (NAME OF PLAN MEMBER), being a member of the **(NAME OF PLAN)**, and having satisfied the conditions specified in the definition of common-law spouse in subsection 1(1), do hereby declare that I entered into a common-law relationship on **(DATE)** with **(NAME OF COMMON LAW SPOUSE)** and the relationship ceased on **(DATE)**

I, (NAME OF COMMON LAW SPOUSE), being a common law spouse of **(NAME OF PLAN MEMBER)**, and having satisfied the conditions specified in the definition of common-law spouse in subsection 1(1), do hereby declare that I entered into a common-law relationship on **(DATE)** with **(NAME OF PLAN MEMBER)** and the relationship ceased on **(DATE)**

_____
Signature of Plan Member

_____
Signature of Former Spouse

_____
Date of Declaration

D. BENEFIT ENTITLEMENT ON CHANGE OF PROVINCIAL JURISDICTION

Commission's Original Proposals

The Pension Commission's proposed legislation for a "modified final location" approach to the calculation of benefits entitlements upon a plan member's transfer to, and termination of membership in, another provincial jurisdiction.

Discussion

Currently, Manitoba and Ontario are the only jurisdictions using the checker board approach in the calculation of a plan member's benefit entitlement at plan termination. This approach requires that benefits accrued while employed in Manitoba or Ontario will be determined in accordance with that province's pension legislation on a proportionate basis.

The Commission's proposal to adopt the modified final location approach is an endeavour to move closer to national uniformity in calculating benefit entitlement upon a plan member's transfer to another province. It is the Commission's view that the lack of uniformity in this area is a major burden to employers particularly for large national employers and for multi-employer plans.

While the Commission acknowledges that the modified final location approach could, in some instances, result in an increase or a reduction of benefits, the Commission is of the view that the merits of the approach and its positive impact on national uniformity outweigh the potential cases of benefit change. In responding to this specific proposal, the vast majority of participants endorsed this proposal.

Accordingly, the Commission recommends:

To proceed with the legislative changes necessary to introduce the proposed changes.

Proposed Legislative Wording: Statute Change

Clause 21(1)(e) repealed and substituted

1 Clause 21(1)(a) is repealed and the following substituted:

(a) that a member of the pension plan who has been in the service of the employer for a continuous period of 10 years, or has been a member of the plan for a continuous period of 10 years, whichever first occurs, is entitled upon termination of his employment or upon termination of his membership in the plan prior to his attaining retirement age, to a deferred life annuity commencing in accordance with the terms of the pension plan, as those terms were as of the date of termination of his employment, as though he had continued to be a member of the pension plan and that (except for pension benefits provided by voluntary additional benefits) is not less than the pension benefits in respect of service as an employee after July, 1976,

(i) under the terms of the pension plan in respect of service on or after the qualification date, or

(ii) under an amendment to the terms of the pension plan made on or after the qualification date, or

(iii) by the creation of a new pension plan on or after the qualification date; and

Clause 21(2)(a) repealed and substituted

2 Clause 21(2)(a) is repealed and the following substituted:

(a) that a member of the pension plan who has been in the service of the employer for a continuous period of two years, or has been a member of the plan for a continuous period of two years, whichever first occurs, is entitled upon termination of his employment or upon termination of his membership in the plan prior to his attaining retirement age, to a deferred life annuity commencing in accordance with the terms of the pension plan, as those terms were as of the date of termination of his employment, as though he had continued to be a member of the pension plan and that (except for pension benefits provided by voluntary additional benefits) is not less than the pension benefits in respect of service as an employee after January 1, 1985,

(i) under the terms of the pension plan in respect of service on or after January 1, 1985, or

(ii) under an amendment to the terms of the pension plan made on or after January 1, 1985, or

(iii) by the creation of a new pension plan on or after January 1, 1985; and

E. CHANGES DUE TO FEDERAL TAX LAW

Commission's Original Proposal

In the discussion paper the Commission proposed to eliminate two areas of significant conflict with the Income Tax Act by amending The Pension Benefits Act. Firstly, the Commission suggested amending the Act to exempt benefits in excess of Revenue Canada maximums from the lock-in provisions of The Pension Benefits Act. Secondly, in response to calls from private employers, the Commission proposed omitting retired individuals in receipt of a pension returning to work with their former employer, from the mandatory membership provision of the Act.

Discussion

On the whole, the concept of reducing and or eliminating conflicts between The Pension Benefits Act and the Federal Income Tax Act drew significant support from commentators. The two proposals for legislative change identified by the Commission were, in particular, received considerable endorsement.

Accordingly, the Commission recommends:

That The Pension Benefits Act be amended to:

1. provide for specific benefits in excess of the maximum permitted by Revenue Canada to be exempted from provincial lock-in; and

2. to exclude retired employees receiving a pension returning to work for their previous employer from the membership provisions of the Act.

Maximum Accrued Benefit.

Proposed Legislative Wording: Statute Change

Subsection 21(2.1) added

1 The following is added after subsection 21(2):

21.(2.1) Notwithstanding clauses (1)(b) and 2(b), where

(a) a pension plan provides a benefit or allocates surplus assets in respect of a person entitled to a benefit and the benefit or surplus asset allocation is in excess of the maximum benefit or contribution limit applicable to the pension plan under the Income Tax Act (Canada); or

(b) the commuted value of the benefits is in excess of the maximum limit that can be transferred to another pension plan or to a registered retirement savings plan under the Income Tax Act (Canada);

the amount of the benefit, surplus asset allocation or commuted value that is in excess of the maximum limit is exempt from the requirements of clauses 1(b) and 2(b) and shall not be treated as locked-in funds for purposes of this Act.

Membership Exemption

Clause 21(20)(e) added

1 Subsection 21(20) is amended by adding the following after clause (d):

(e) a person who retires from the employment of the employer, is in receipt of a pension benefit and subsequently returns to work for the same employer;

Note: The words "to become a member of the pension plan" would remain as the last line of subsection 21(20).

F. CREDIT SPLITTING

Commission's Original Proposal

The Commission proposed that only the "net difference" need be transferred for mandatory credit splitting where both spouses were members of the same plan.

Discussion

Respondents did not disagree with this concept. However, some respondents questioned the policy issue of mandatory credit splitting. Commissioners heard from a number who felt that the policy goals of mandatory splitting were laudable but that many hardships and undesirable consequences resulted from the strict application of current legislation. Criticisms included:

1. Strict application of the law does not permit transfer of equivalently valued RRSP monies to the other spouse. It is argued that if this was allowed, it would permit retirement assets to be transferred without affecting the pension assets of the spouse transferring the assets.

2. Conflict with the Income Tax Act does not permit a separating spouse to "buy back" the credits transferred to the other spouse since mandatory credit splitting does not generate additional RRSP room. Therefore, tax law may be viewed as especially onerous to the spouse losing the credit and overly generous to the spouse gaining the credit.

3. There remains unfairness when a Manitoba pension plan member must split their pension credits on marriage breakdown while no such requirement exists for Manitoba members of a federally regulated plan.

4. Depending on age and service at the time of marital breakdown, mandatory splitting can result in both spouses (if both have RPPs) having lesser retirement benefits than would otherwise be the case.

5. Some individual female presenters expressed very strong and vocal opposition to current legislation. They suggested that government has given too much weight to the views of one or two lobby groups. According to these individual presenters, the law treats women in a demeaning fashion (since they are assumed to always make decisions that would not be in their best interests, regardless of private legal advice) and frustrates the ability of the parties to reach more preferable and amicable agreements as permitted by every other jurisdiction in Canada.

Commissioners were persuaded by the logic of these suggestions.

Accordingly, the Commission recommends:

That legislation be modified such that mandatory credit splitting will apply unless both parties mutually agree to exempt themselves (in which case their pension assets would be treated like any other marital asset.)

Either party can refuse to opt out thereby ensuring application of the mandatory credit splitting provisions.

That when mandatory credit splitting requirements are applicable, regulations should permit:

(a) the transfer of the net difference where both spouses are members of the same plan and the plan so permits;

(b) the transfer of RRSP monies to the spouse in lieu of RPP assets, providing these are transferred to a locked-in RRSP.

(c) a Manitoba registered plan member to opt out of mandatory credit splitting where their former spouse is a member of a federally regulated plan which does not permit the splitting of pension credits.

Finally, that the application of these amendments extend to all cases of marriage breakdown where no agreement to divide the marital assets has been reached.

Suggested Legislative Wording: Statute Changes

Subsection 31(2) amended

1 Subsection 31(2) is amended by repealing the words "Subject to subsection (3) and subsection (3.1) where" and substituting "Subject to subsections (3), (3.1) and (3.2), where".

Subsection 31(3.1) repealed and substituted

2 Subsection 31(3.1) is repealed and the following substituted:

Non-application

31(3.1) Subsection (2) does not apply where

(a) the spouses or parties demonstrate that they have received independent legal advice with respect to the division of pension benefits and advise their employers in writing that they have mutually agreed not to divide pension benefit credits of, or payments from, the pension plan or plans which is or are subject to this Act; or

(b) a Manitoba member of a pension plan subject to this Act, whose spouse is a member of a pension plan registered in another jurisdiction of Canada which does not provide for mandatory credit splitting, notifies the employer in writing of his or her wishes not to divide the pension benefit credits of, or payments from, the pension plan or plans which is or are subject to this Act.

Non-application

31(3.2) Subsection (2) does not apply where

(a) either of the following conditions is satisfied:

(i) the pension benefit credit of one spouse or party under a pension plan differs from the pension benefit credit of the other spouse or party under a pension plan by 20% or less of the larger pension benefit credit, or

(ii) the payments due to one spouse or party under a pension plan differ from the payments due to the other spouse or party under a pension plan by 20% or less of the larger payment;

(b) one or both of the pension plans referred to in clause (a) is subject to this Act; and

(c) the spouses or parties have agreed in writing not to divide the pension benefit credits of or payments from the pension plan or plans which is or are subject to this Act.

Proposed Legislative Wording: Regulatory Changes

Subsections 24(6) and (7) added

1 The following subjections are added after subsection 24(5):

24(6) Where both spouses or parties are members of the same pension plan and the plan permits it, the pension plan administrator may satisfy the requirements of subjection (3) by effecting a transfer only from the larger pension benefit credit to the smaller pension benefit credit.

24(7) For purposes of complying with this section and subsection 31(2) of the Act, a spouse or party may transfer funds from a registered retirement savings plan.

G. ANNUAL INFORMATION RETURN

Commission's Original Proposal

The Commission's proposal outlined in the Public Discussion paper sought to reduce the administrative burden on plan sponsors and administrators by making the following changes:

1. Introducing a simplified annual return.
2. Requiring that a more detailed annual return be completed and filed with a fee only every three years.
3. Committing the Commission to summarize, publish, and distribute comparative reports based on the detailed data.
4. Collecting fees every three years.
5. Staggering the distribution of the more detailed forms over a three year cycle.

Discussion

The proposal evoked a variety of comments from those respondents who chose to speak to this matter. The Commission noted that, on the whole, the proposal received qualified support. The caveat identified by several parties was that the Commission remain cognizant of the need to make data collection efforts as economical and efficient as possible. In the interest of streamlining administrative requirements the Commission was reminded that the triennial valuation reports contain a great deal of detailed data and could serve as a primary source of information. The Commission was also urged to explore all avenues for sharing data with Federal regulators. The Commission in its deliberations acknowledged these points and instructed staff to bear them in mind when designing the new information forms.

Accordingly, the Commission recommends:

That the legislative and regulatory changes necessary to introduce the proposed changes, be enacted.

Proposed Legislative Wording: Statute Change

Section 6 repealed and substituted

1 Section 6 is repealed and the following is substituted:

6(1) The annual information return required to be filed pursuant to subsection 18(4) of the Act shall be made on a form prescribed by the superintendent and shall be furnished by the employer to the commission annually not later than six months following the end of the fiscal year of the pension plan.

6(2) Where an employer is required to prepare and file a report pursuant to section 4 with respect to a fiscal year, the annual information return shall be a detailed return made on a form prescribed by the superintendent and shall be furnished by the employer to the commission no later than six months following the end of the fiscal year to which the report pursuant to section 4 relates.

6(3) The employer shall certify in the annual information return as to whether all contributions required with respect to the fiscal year have been paid into the pension plan.

Section 8 repealed and substituted

2 Section 8 is repealed and the following substituted:

8(1) Upon application for registration of a pension plan pursuant to subsections 18(1) and (2) of the Act, a fee of $5 shall be paid in respect of each member of the pension plan in Manitoba and in respect of each member of the pension plan in a designated province, reported to be on the payroll of the employer; but the total fee payable shall be not less than $100 and not more than $5,000.

8(2) Upon the filing of a detailed return pursuant to subsection 6(2), a fee of $15 shall be paid in respect of each member of the pension plan in Manitoba and in respect of each member of the pension plan in a designated province, reported to be on the payroll of the employer; but the total fee payable shall be not less than $300 and not more than $15,000.

8(3) Notwithstanding subsection (2),

(a) where an employer is required to submit a detailed information return pursuant to subsection 6(2) in 1993, the employer shall pay a fee of $5 in respect of each member of the pension plan for the filing of the 1993 information return but the total fee payable shall not be less than $100 and not more than $5,000 and thereafter subsection (2) shall apply.

(b) where an employer is required to submit a detailed information return pursuant to subsection 6(2) in 1994, the employer shall pay a fee of $5 in respect of each member of the pension plan for the filing of an information return in 1993 and 1994, but the total fee payable in each year shall not be less than $100 and not more than $5,000 and thereafter subsection (2) shall apply; and

(c) where an employer is required to submit a detailed information return pursuant to subsection 6(2) in 1995, the employer shall pay a fee of $5 in respect of each member of the pension plan for the filing of an information return in 1993, 1994 and 1995 but the total fee payable in each year shall not be less than $100 and not more than $5,000 and thereafter, subsection (2) shall apply.

H. ADDITIONAL RECOMMENDATIONS

In addition to the recommendations tabled in the public discussion paper, respondents offered other suggestions which would make The Pension Benefits Act more sensitive to administrative concerns without diminishing pension entitlements. The Commission endorses the following suggestions:

1. Commutation of Small Pensions

Section 21(4)c should be changed to eliminate exemption from annuity purchases where the payout is $25.00 a month or less to one based on a percentage of the YMPE. It is recommended that in respect of a termination that occurs on or after the date of the promulgation of this section, an annual pension may be commuted if it is not more than 2% of the YMPE in the year the employee terminated employment or if the commuted value is less than 4% of the YMPE in the year the employee terminated employment.

2. Solvency Valuations

That, every triennial actuarial valuation should contain a valuation based on the tests for solvency as prescribed by the Canadian Institute of Actuaries. Furthermore, this information should be required to be reported to the Commission as part of the Cost Certificate.

Suggested Legislative Wording: Statute Change

Commutation of Small Pensions

Clause 21(4)(c) repealed and substituted

1 Clause 21(4)(c) is repealed and the following substituted:

(c) payment to an employee of an amount equal to the commuted value of the deferred life annuity or pension benefit to which the employee is entitled where

(i) the annual amount payable to the employee at normal retirement age is less than 2% of the YMPE in the year in which the pension plan member retired or terminated his or her employment, or

(ii) the commuted value of the pension is less than 4% of the YMPE in the year in which the pension plan member retired or terminated his or her employment.

Subsection 1(1) amended

1 Subsection 1(1) is amended by adding after the definition of "voluntary additional contribution" the following definition:

"YMPE" means the Year's Maximum Pensionable Earnings as defined in the Canada Pension Plan (Canada).

Solvency Valuation

Regulation changes establishing the requirement for solvency valuations and the reporting of the information will be published shortly.

Appendix A

Listing of Participants

Anthony Meech
Canadian Autoworkers' Union
Canadian Institute of Actuaries
Canadian Life and Health Insurance Association, Inc.
Chris Christensen
Co-Operative Superannuation Society
Coughlin & Associates
Don Ross
Great-West Life Assurance Company
Health Sciences Centre
Hyline Credit Union
International Association of Bridge, Structural and Ornamental Ironworkers, Local 278
Investors Group
John Corp
June Stewart
Manitoba Association of School Business Officials
Manitoba Association of Women and the Law
Manitoba Family Law Branch
Manitoba Federation of Labour
Manitoba Health Organizations
Manitoba Nurses' Union
Manitoba Society of Seniors
Manitoba Teachers' Society
Murray Smith
Pension Commission of Ontario Assessment of Public Hearings
Salisbury House
Sedgwick James
St. Boniface General Hospital
Standard Life
The Alexander Consulting Group
The Canadian Bankers' Association
The Canadian Union of Public Employees (Manitoba Division)
The Employee Benefits Board (City of Winnipeg)
The Life Underwriters Association of Canada
The Trust Companies' Association of Canada
TPF & C
Turnbull and Turnbull
University of Manitoba (Staff Benefits)
University of Manitoba Faculty Association
William M. Mercer Limited
Winnipeg Chamber of Commerce
Winnipeg Police Association
Susan Cormack
Bev Hindle